

UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

JEREMY JEROME SMILEY,  
Plaintiff,  
v.  
SCHULTZ, et al.,  
Defendants.

No. 2:24-cv-01626-KJM-EFB (PC)

FINDINGS AND RECOMMENDATIONS

Plaintiff is a former state prisoner proceeding without counsel in an action brought under 42 U.S.C. § 1983. At plaintiff's request the court dismissed his case, ECF No. 15, but he has now asked the court to re-open it. ECF No. 16. He has also filed a motion for a temporary restraining order. ECF No. 17. Both requests must be denied.

On August 19, 2024, plaintiff asked the court to dismiss his case. ECF No. 14. Accordingly, the court dismissed the case under Federal Rule of Civil Procedure 41(a)(1) on August 30, 2024. ECF No. 15. Plaintiff's request for dismissal and the court's grant of that request closed the case and deprived the court of jurisdiction over the dismissed claims. *Energy Trading and Mktg., LLC v. Davis*, 267 F.3d 1042, 1049 (9th Cir. 2001) ("Once the notice of dismissal has been filed, the district court loses jurisdiction over the dismissed claims and may not address the merits of such claims or issue further orders pertaining to them."). Thus, if plaintiff has changed his mind and wishes to pursue the claims he raised in this case, the proper

1 course of action is for plaintiff to file a new case. *Elgen Mfg. Co. v. Mac Arthur Co.*, No. 23-cv-  
2 04929-JST, 2024 U.S. Dist. LEXIS 146809, at \*9-11 (E.D. Cal. Sept. 16, 2024) (collecting  
3 cases).

4 Accordingly, it is hereby RECOMMENDED that the court deny plaintiff's October 23,  
5 2024 motion to reopen (ECF No. 16), close the case, and direct the Clerk of Court to  
6 administratively terminate the pending motion for temporary injunction (ECF No. 17).

7 These findings and recommendations are submitted to the United States District Judge  
8 assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within fourteen days  
9 after being served with these findings and recommendations, any party may file written  
10 objections with the court and serve a copy on all parties. Such a document should be captioned  
11 "Objections to Magistrate Judge's Findings and Recommendations." Failure to file objections  
12 within the specified time may waive the right to appeal the District Court's order. *Turner v.*  
13 *Duncan*, 158 F.3d 449, 455 (9th Cir. 1998); *Martinez v. Ylst*, 951 F.2d 1153 (9th Cir. 1991).

14  
15 Dated: March 4, 2025

  
EDMUND F. BRENNAN  
UNITED STATES MAGISTRATE JUDGE